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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 1006

ROOFIRE ALARM COMPANY,

Petitioner,

vs.

ROYAL INDEMNITY COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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BYE-GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-1547

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To the United States Court of Appeals
For the Sixth Circuit.

The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on February 14, 1963.

OPINIONS BELOW.

The opinion of the District Court for the Eastern District of Tennessee, Southern Division (Appendix, page 6) is reported at 202 F. Supp. 166. The order of the Court of Appeals for the Sixth Circuit (Appendix, page 5) is unreported.

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 14, 1963. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

In an anti-trust suit asking for an injunction and declaratory judgment, where a combination in restraint of trade was acknowledged to exist, the District Court and Court of Appeals held that this combination in restraint of trade was not a violation of the Sherman Act because it was "for lawful and proper purposes." (Appendix, page 11.)

The question presented is, is a combination in restraint of trade legal because "for lawful and proper purposes"?

STATUTES INVOLVED.

15 U. S. C. § 1, The Sherman Act, is set forth in the Appendix at page 4.

STATEMENT OF THE CASE.

The Royal Indemnity Company is a member of the National Board of Fire Underwriters and the National Fire Protection Association; the former controls the Underwriters Laboratories, Inc., a nonprofit corporation which tests fire warning devices and reports on the results of such tests. The president of Royal Indemnity Company is Chairman of the Board of Trustees of Underwriters Laboratories, Inc. The National Fire Protection Association and those who act in concert with it do not endorse or recommend the purchase of any particular fire alarm device, but do recommend to the public that only devices listed or approved by the Underwriters Laboratories, Inc. be purchased. As a consequence the marketability of the plaintiff's product has been impaired.

It is conceded that the motives of the defendant "are pure" and that Royal has no intention to violate the law. No price fixing is claimed, only simple concerted action that effects a restraint of trade in unapproved or unlisted fire alarm devices.

This litigation is related to an attempt by the plaintiff, Roofire Alarm Company, to require the Underwriters Laboratories, Inc. to test his fire alarm device, on the ground that Underwriters Laboratories, Inc. had an obligation to the public to operate under a reasonable set of standards. The District Court and Court of Appeals decided, *Roofire v. Underwriters Laboratories*, 188 F. Supp. 753, 284 F. 2nd 360, that Underwriters Laboratories, Inc. was a "business league formed to perform services ordinarily conducted for profit," and the standards were "not so unreasonable as to justify the entry of a declaratory judgment for the plaintiff."

The standard in question requires the signal emitted by a fire alarm device to operate continuously for a period of at least three minutes.

ARGUMENT.

Reasons for Granting the Writ.

The Court of Appeals for the Sixth Circuit, and the District Court, have found on motion for summary judgment made by the defendant, that a combination in restraint of trade is not violative of the Sherman Act when its motives are pure and its purposes lofty. This is contrary to the settled law as set forth in the statute, 15 U. S. C., § 1, and as expressed by the Supreme Court of the United States. *Thomsen v. Cayser*, 243 U. S. 66; *Radiant Burners, Inc. v. Peoples Gas Light & Coal Co.*, 364 U. S. 656.

CONCLUSION.

For the above reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIZER CHAMBLISS.

APPENDIX.

STATUTE.

15 U. S. C. § 1. "*Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.*

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under Section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a

misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Before: CECIL, Chief Judge, MILLER and O'SULLIVAN, Circuit Judges.

This is an appeal from an order of the United States District Court for the Eastern District of Tennessee, Southern Division, granting summary judgment to the defendant-appellee. The plaintiff-appellant's action is brought under sections 1 and 3 of Title 15, U. S. C., commonly known as the Sherman Anti-Trust Act.

The appellant claims that it is licensed to market a fire alarm device and that the marketability of this device has been adversely affected by the refusal of Underwriters' Laboratories, Inc., to test the device and publish the results of its tests in a publication it circulates under the title Fire Protection Equipment. It is further claimed by the appellant that the appellee acted in concert with Underwriters' Laboratories, Inc., The National Board of Fire Underwriters of the United States, and the National Fire Protection Association, to prevent its device from being tested and listed by Underwriters' Laboratories, Inc., in its publication.

The appellant by its action in the District Court sought a declaratory judgment as to the effect of the alleged concert of action and an injunction against the appellee, Royal Indemnity Company, from acting in concert with Underwriters' Laboratories, Inc., in restraint of trade.

The facts are fully set forth in the opinion of Judge Wilson, reported at 202 F. Supp. 166.

The case on appeal was submitted to this Court on the briefs and appendices of the parties and upon oral arguments of counsel. Upon consideration the Court concludes that the motion for summary judgment was properly sustained for the reasons set forth in the opinion of the trial judge.

It is therefore ordered and adjudged that the judgment of the District Court be and it is hereby affirmed.

LESTER L. CECIL,
Chief Judge, United States Court of Appeals, Sixth Circuit.

OPINION OF THE DISTRICT COURT.

WILSON, *District Judge.*

This is an anti-trust suit wherein the plaintiff seeks a declaratory judgment and an injunction against the defendant for allegedly acting in concert with Underwriters Laboratories, Inc., in restraint of trade. It is alleged that the plaintiff is licensed to market a fire alarm device, which is described as a small detonating device for which many advantages are claimed, including low cost and lack of maintenance. It is further alleged however that the marketability of the device has been adversely affected by Underwriters Laboratories, Inc., declining to test the device or publish the results of such test. It is alleged that the defendant, Royal Indemnity Company, acted in concert with Underwriters Laboratories, Inc., in this regard. It is alleged that this concert of action was accomplished both directly and through the National Board of Fire Underwriters and the National Fire Protection Association, both being associations involved in fire prevention and related activities in which the defendant is a member. It is contended that there is an interlocking of officers and di-

rectors between the defendant and all of the above organizations which has resulted in this case in an illegal concert in restraint of trade. The suit is based upon the alleged violation by the defendant of Sections 1 and 3 of the Sherman Act, 15 U. S. C. A. §§ 1, 3.

By answer, the defendant avers that it is a fire and casualty insurance company and admits that it is a member of the National Board of Fire Underwriters, which organization in turn sponsors Underwriters Laboratories, Inc., and admits that its president, Clarke Smith, is also an officer in Underwriters Laboratories, Inc. It admits that it works with Underwriters Laboratories, Inc., and with the National Board of Fire Underwriters (NBFU) and the National Fire Protection Association (NFPA) to promote fire prevention measures and fire safety practices, but denies that there is any concert of action between itself and the other organizations in restraint of trade. The defendant denies knowledge of the refusal of Underwriters Laboratories, Inc., to test the plaintiff's device or to publish the results of such test, and denies that it has ever recommended against use of any fire alarm device not listed as approved by Underwriters Laboratories, Inc.

Since the filing of the complaint and the answer numerous admissions have been requested and filed, various affidavits have been filed, many exhibits have been filed and several depositions have been taken, including the deposition of John A. Chambliss, the sole stockholder of the plaintiff corporation and the inventor of the fire alarm device involved in this suit.

A motion for summary judgment was therefore filed by the defendant and overruled by the Court. Since the action upon that motion, many additional matters have been set forth in the record, including an additional affidavit of Clarke Smith, President of the defendant cor-

poration, and including the discovery deposition of Mr. Chambliss and others.

From all of these it now satisfactorily appears to the Court that there is no genuine issue as to any material fact and that the defendant's motion for summary judgment should be sustained.

From the record it appears undisputed that the plaintiff is a one man corporation set up by John A. Chambliss, the inventor of the fire alarm device. As shown by his deposition, he is the only stock subscriber having subscribed for the minimum capital for beginning business of $1000. He is the secretary-treasurer of the corporation and two of his relatives hold the only other corporate offices.

It likewise appears undisputed in the record that the defendant, Royal Indemnity Company, is engaged in the fire and casualty insurance business. Its president, Clarke Smith, is also chairman of the Executive Committee of the National Board of Fire Underwriters and chairman of the Board of Trustees of Underwriters Laboratories, Inc. The National Board of Fire Underwriters, of which the defendant is a member, is an association of approximately 200 fire insurance companies. Its general purpose is to promote fire safety and sound fire underwriting practices. The National Fire Protection Association, of which the defendant is also a member, is a voluntary association made up of approximately 17,000 members from many fields, apparently including almost any organization interested in fire prevention, fire fighting, fire safety and related activities. In fact, Mr. Chambliss himself is a member of this Association. Underwriters Laboratories, Inc., is a testing laboratory, sponsored by National Board of Fire Underwriters, engaged in the testing of materials, products and devices from a fire, casualty and crime prevention standpoint. It is supported by charges made for testing services

but receives no payment from the sale of any product listed by it and does not recommend the purchase of any individual product to the buying public. Neither the defendant, Royal Indemnity Company, the National Board of Fire Underwriters, the National Fire Protection Association nor Underwriters Laboratories, Inc., engages in any manufacturing business, nor do they endorse or recommend any particular fire alarm device, nor do they receive any commission or royalties from the sale of such devices. In short, neither the defendant nor any of the organizations with which it is alleged to have been acting in combination is in any way in competition with the plaintiff. Neither is it claimed that they have attempted to fix or control prices in this field in any way, nor is it claimed that there has been any attempt by the defendant or the combination of which it is alleged to be a part to suppress competition between the plaintiff and the producers of any similar fire alarms. The defendant's intentions in this regard are admitted to be proper and no intent to violate the law is charged to the defendant.

The basic complaint of the plaintiff appears to be that Underwriters Laboratories, Inc., has declined to test or list the plaintiff's fire alarm device, that the defendant, in combination with the National Board of Fire Underwriters and the National Fire Protection Association control and dominate the policies of Underwriters Laboratories and that the influence of this combination is such that upon the failure and refusal of Underwriters Laboratories to test or list the plaintiff's device plaintiff has been unable to advertise in some media and the marketability of its product has been greatly curtailed.

It appears that Underwriters Laboratories has established certain standards which any product submitted to it must meet before it will be tested or listed in its publi-

cations as approved. Among other standards set, it requires that any fire alarm device give a warning over a minimum period of three minutes and meet certain temperature requirements. The plaintiff's explosive device did not meet these standards and was therefore not eligible for testing or listing.

By a former suit the plaintiff sought to compel Underwriters Laboratories to test its device. In the case of *Roofire Alarm Co. v. Underwriters Laboratories, Inc.*, (1959) D. C., 188 F. Supp. 753, affirmed (C. C. A. 6, 1960) 284 F. 2d 360, this Court has held that Underwriters Laboratories, Inc., did not act unreasonably in setting standards for fire alarm devices, including a requirement that the alarm continue for at least three minutes, as a prerequisite for its testing or approval of the device, and Underwriters Laboratories, Inc., could not be required to test or approve devices which did not meet their minimum standards.

It is apparent from the record that Underwriters Laboratories has a high degree of acceptability in the field of testing fire equipment. Its testing and approval appears to have gained for its national recognition and acceptance. However it does not appear from the record that it has any exclusive or monopoly rights in the testing field. Its acceptance appears to be on the basis of competence rather than on the basis of any illegal combination or restraint in the field. The imposition of standards which it considers reasonable as a condition to its testing and approval is doubtless a major factor in the acquiring of the national reputation which it appears to have. Other testing facilities are shown to exist under the proof. In any event, Underwriters Laboratories is not a party to this suit.

Morever, it appears from the deposition of Mr. Chambliss that he individually submitted a somewhat similar de-

vice to Underwriters Laboratories several years ago, which it declined to test for the reasons stated above. This was before the organization of the plaintiff corporation. A modified or improved version of the device has been developed in recent years. Although the plaintiff corporation has no express license to manufacture or market the device since its incorporation upon February 3, 1958 from Mr Chambliss, the inventor and holder of the patent, he considers that it has a license "in fact." In any event, the modified device has never been submitted to Underwriters Laboratories for testing and neither the plaintiff nor Mr. Chambliss has submitted any device for testing since the organization of the plaintiff corporation. In fact, the plaintiff has no place of business other than Mr. Chambliss' office, no banking or other accounts, engages in no manufacturing, distributing or sales than the minor and incidental sales made by Mr. Chambliss.

|1| It is essential to a Sherman Act violation, not just that there be a combination or conspiracy, but that interstate commerce be illegally restrained as a result thereof. There must be an illegal restraint of interstate commerce producing a direct and substantial restraint of interstate commerce. *Ruddy Brook Clothes, Inc. v. British & Foreign Marine Ins. Co.* (C. A. 7, 1952), 195 F. 2d 86, cert. denied 344 U. S. 816, 73 S. Ct. 10, 97 L. Ed. 635; *Spears Free Clinic, etc. v. Cleere* (C. A. 10, 1952), 197 F. 2d 125.

|2-4| The action of Underwriters Laboratories, Inc., appears to be for lawful and proper purposes. Even if the defendant participates with or through others in the setting of the standards adopted by Underwriters Laboratories, Inc., there is nothing to indicate that this has accomplished any unlawful or improper purpose. Rather, the defendant's connection with Underwriters Laboratories, Inc., and

with other related organizations likewise appears to be for lawful and proper purposes. The plaintiff makes no charge of "per se" violations such as price fixing, suppression of competition, etc. The Sherman Act is not intended to reach normal and usual contracts or combination which are incidental to lawful purposes and are intended to further legitimate trade. *Eastern States Retail Lumber Dealers Association v. United States*, 234 U. S. 600, 34 S. Ct. 951, 58 L. Ed. 1490. Nor it is intended to inhibit the intelligent conducting of business operations. 36 *Am. Jur.*, Monopolies, Sec. 147. An association formed to foster high standards, to mitigate evils in trade existing through lack of knowledge or information, and to encourage fair competitive opportunities is not to be condemned as an undue restraint of interstate commerce in violation of the Sherman Act merely because it may effect a change in market conditions. 36 *Am. Jur.*, Monopolies, Sec. 148. The Act sets such standards of reasonableness, and a restraint is not unlawful unless it is unreasonable. *Standard Oil Co. of New Jersey v. United States*, 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619. In this regard the rule is stated in 36 *Am. Jur.*, Monopolies, Sec. 1539, as follows:

> "It is held that the statute does not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose, but prohibits only acts or contracts or agreement or combinations which operate to the prejudice of the public interests by unduly restricting competition, or unduly obstructing the due course of trade, or which, either because of their inherent nature or effect or because of the evident purpose of the acts etc., injuriously restrain trade."

[5] The plaintiff's real purpose, as stated by Mr. Chambliss, is to require Underwriters Laboratories, Inc., to list his device in its publications, even though it is listed as disapproved. Having previously been denied this relief in the case of *Roofire Alarm Co. v. Underwriters Laboratories, Inc., supra*, it cannot be granted this relief in a suit against Royal Indemnity Company. No material fact remains in issue and since the plaintiff would not be entitled to relief under the Sherman Act for the reasons stated above, the motion for summary judgment will be granted.

An order will enter accordingly.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9647

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BRIEF FOR THE RESPONDENT IN OPPOSITION.

Respondent, Royal Indemnity Company, opposing the petition for writ of certiorari, would respectfully show the Court:

OPINIONS BELOW.

The opinion of the District Court is reported at 202 F. Supp., 166, and that of the Court of Appeals at 313 F. 2d. 635.

JURISDICTION.

The jurisdictional requirements are adequately set forth in the petition.

QUESTIONS PRESENTED.

Petitioner's "question presented" is unacceptable because based on a misstatement of fact in the preface to the statement, viz: that a "combination in restraint of trade * * * was acknowledged to exist." No such acknowledgment was made because no such combination in restraint of trade existed.

Respondent's "questions presented" are—

1. Does an unlawful "combination in restraint of trade" exist merely because (a) respondent, a fire and casualty insurance company, (i) holds memberships in National Board of Fire Underwriters ("NBFU") and National Fire Protection Association ("NFPA"), (both of which are engaged in fire prevention activities) and (ii) cooperates with NBFU and NFPA (as well as other interested parties) in furthering the cause of fire prevention, and (b) respondent's President was on the Executive Committee of NBFU, and was Chairman of the Board of Trustees of Underwriters' Laboratories, Inc. ("UL"), (a nonprofit testing laboratory engaged in testing fire prevention materials and equipment) and (c) UL, in 1954, refused to list petitioner's earlier model of fire alarm device because it failed to meet UL's standards (in which it was upheld in *Roofire Alarm Co. v. Underwriters' Laboratories, Inc.*, (6 Cir. 1960), 188 F. Supp. 753, 284 F. 2d 360), (d) neither respondent nor any other organization named in the case is alleged to be part of any combination to restrain competition between petitioner and its competitors, and (e) petitioner's device is alleged to be less marketable without UL's listing?

2. Under the facts outlined in question No. 1 above, and where it is agreed no genuine issue exists as to a material fact, was respondent entitled to a summary judgment in its favor?

STATEMENT OF THE CASE.

This suit was filed November 24, 1959, charging respondent with violating 15 U. S. C. § 1 by "act(ing) in concert" with NBFU, NFPA and UL (R. 17a, VI) "in restraint of trade" (R. 18a, VIII). The alleged restraint of trade consisted of NBFU and NFPA suggesting that "the public * * * disregard any fire alarm that is not listed by the Underwriters' Laboratories, Inc." because "an alarm not listed is of doubtful efficacy" (R. 22a), respondent, NBFU, NFPA and UL well knowing that fire alarms not listed by UL "are less marketable" (R. 16a, III). A declaratory judgment was sought "as to legal effect of the concert of action" and an injunction to prevent respondent "from acting in concert with the Underwriters' Laboratories, Inc. in restraint of trade" (R. 18a).

Respondent is a fire and casualty insurance company holding memberships in NBFU and NFPA (R. 1b). Its President was on the Executive Committee of NBFU and was Chairman of the Board of Trustees of UL (R. 7b). It is not in competition with petitioner nor with NBFU, NFPA or UL. Neither NBFU, NFPA nor UL is in competition with petitioner, nor with each other (R. 16b). Respondent does not recommend, approve or disapprove, nor does it have any pecuniary interest in, the manufacture or sale of any particular make or type of fire alarm device (R. 1b, 15b-16b). It is interested in improving fire prevention materials, equipment and procedures and cooperates with NBFU, NFPA, UL and countless other organizations in effort to reduce fire losses (R. 1b).

NBFU is an association of two hundred and three stock fire insurance companies with principal offices at 85 John Street, New York, New York (R. 1b). It is the stock fire insurance company trade association whose purpose, as expressed in its constitution, includes the promotion of

sound underwriting, the adoption and maintenance of up-to-date fire protection measures by municipalities, and others concerned with fire prevention, and the establishment of building construction standards to minimize fire hazards (R. 21b). NBFU sponsors UL and receives annual reports of its operations but grants it no subsidies and makes no donations to it. It has never engaged in the manufacture or sale of fire alarm devices and does not endorse or recommend the purchase of any particular fire alarm device (R. 2b, 15b-16b).

NFPA is an association with its principal offices at 60 Battery March Street, Boston, Massachusetts. Its purpose is to foster, improve and disseminate information concerning the latest developments in fire prevention practices, methods, materials and devices (R. 6b). It has more than two hundred organization members, including, in addition to NBFU, UL and petitioner, such diverse organizations as American Institute of Architects, American National Red Cross, International Brotherhood of Electrical Workers, International Association of Fire Chiefs, Edison Electric Institute, United States Air Force, and the Departments of Agriculture, Army, Interior and Navy of the United States Government. In addition, it has approximately 17,000 associate members of whom more than 2,400 are chiefs of municipal fire departments throughout the United States (R. 1b-2b). NFPA does not approve particular makes of fire protection equipment, materials or devices. On the recommendation of its appropriate technical committees it adopts standards of recommended practices for the installation, maintenance and use of devices and materials having to do with fire protection and prevention (R. 2b). In articles appearing in its several publications and elsewhere it recommends that the public, in purchasing fire protection equipment and devices, insist

on ones which have been listed or approved by such nationally recognized testing laboratories as UL or Factory Mutual Laboratories ("FML") or Underwriters' Laboratories of Canada ("ULC") (R. 8b). It also recommends that the local fire inspection authorities be consulted before fire protection equipment, devices and materials are purchased (R. 2b).

UL is a nonprofit corporation without capital stock, organized under the laws of Delaware and having its principal offices in Chicago, Illinois. It is engaged in testing materials, products and devices from a fire, casualty and crime prevention standpoint. Through its many years of experience it has established certain standards which a product must meet before UL will list it in its publications. Many years ago it established the policy of reporting to the public only on products which testing discloses measure up to its standards. UL receives no other compensation from the manufacturer or submitter except a fee to cover the cost of testing, examination and listing. It neither charges nor receives a royalty or other compensation from the sale of products listed by it, and it does not recommend the purchase of any particular product (R. 2b-4b).

Petitioner, a Tennessee corporation, was incorporated February 15, 1958, and was authorized to begin business with a minimum of $1,000.00 capital. John A. Chambliss, inventor and owner of the patent on the fire alarm device in this suit, subscribed for all the stock but has never made payment for it to petitioner. Petitioner has never had a bank account nor any books of account of any kind, has never had any income and consequently has never filed an income tax return. It has neither written nor oral license covering the patent but Mr. Chambliss explains this

by saying that "it has been licensed in fact because I just operate in that way and write letters about it and try to promote it." (R. 13b.) It has no manufacturing facilities, has never sold any of the devices either within or without the State of Tennessee, although Mr. Chambliss, individually, has made a few sales (R. 12b-14b).

A prior model of the device was submitted to UL in 1954 for testing, and was found not to meet its standards for single station fire alarms. See *Roofire Alarm Co. v. Underwriters' Laboratories, Inc., supra*. The current model of the device is different from the one submitted to UL in 1954, and has never been submitted to UL for testing and consequently UL has never refused to test it (R. 17b-18b).

Respondent was singled out to be sued in this case because (a) its President was Chairman of the Executive Committee of NBFU and Chairman of the Board of Trustees of UL, and (b) John A. Chambliss has, as he expressed it, "What I would call allergies for the Royal group" growing out of previous litigation with respondent (R. 18b-20b). Petitioner's real complaint is UL's failure to list the device in its publications (R. 16b).

Originally Springfield Fire & Marine Insurance Company was the intended defendant because its President was at the time Chairman of the Board of Trustees of UL but before suit was filed he was succeeded as Chairman by Clarke Smith (R. 18b-19b), respondent's President.

On the uncontroverted facts, the judgment of the District Court, and the order of the Circuit Court of Appeals affirming the judgment for the reasons set forth in the opinion of the trial judge, are clearly correct. The case presents no important question under the federal antitrust laws nor can there be any assertion that there is any conflict of decision in the courts below.

ARGUMENT.

I.

THE UNDISPUTED FACTS SHOW THERE IS NO BASIS FOR RELIEF UNDER THE SHERMAN ACT.

Under the heading "Argument" petitioner attempts to build a straw man by asserting that both the District Court and the Court of Appeals held that "a combination in restraint of trade is not violative of the Sherman Act when its motives are pure and its purposes lofty." (Petitioner's Brief, p. 3.) It then proceeds to knock the straw man down with authorities to the contrary.

Neither Court made such a holding, and respondent readily admits that the law is not to that effect. Both Courts held that respondent's activities, as evidenced by the undisputed facts, do not constitute a combination in restraint of trade prohibited by the Sherman Act. (App. Petitioner's Brief, pp. 9-10 and pp. 5-6.)

It is essential to a Sherman Act violation either that interstate commerce be illegally restrained or that there be an illegal restraint of intrastate commerce which results in a direct and substantial restraint of interstate commerce.

In this case there is neither interstate commerce, illegal restraint of interstate commerce, nor illegal restraint of intrastate commerce which results in a direct and substantial restraint of interstate commerce. Petitioner has never manufactured or sold the device either in intrastate or interstate commerce. It is not enough that respondent, UL, NBFU and NFPA, or any one or more of them, may be engaged in interstate commerce. Nor would it be enough if petitioner were engaged in interstate commerce. "The test [ ] is not that the acts complained of affect a business engaged in interstate commerce, but that the conduct complained of affects the interstate commerce of such business." *Page v. Work* (9th Cir.), 290 F. 2d. 323.

cert. den. 368 U. S. 875, 7 L. Ed. (2d), 76, 82 S. Ct. 121 (1961).

In applying the Sherman Act, not every arrangement or agreement that might in some way have a restraining effect on trade or commerce is illegal, only unreasonable restraints are prohibited. *Standard Oil Co. v. United States* (1910), 221 U. S. 1, 55 L. Ed. 619, 31 S. Ct. 502. The act "was not intended to reach normal and unusual contracts incidental to lawful purposes and intended to further legitimate trade." *Eastern States Retail Dealers' Ass'n v. United States* (1913), 234 U. S. 660, 58 L. Ed. 1490, 34 S. Ct. 951. *Thomsen v. Cayser*, 243 U. S. 66, 61 L. Ed. 597, 37 S. Ct. 353, cited by petitioner involves the baldest type of per se violation of the anti-trust laws, *i.e.*, agreement to fix prices and compel shippers to deal solely with the conspirators. It has no relevance to this case.

Unlike *Radiant Burners v. Peoples Gas Light & Coke Co.*, 364 U. S. 656, 5 L. Ed. 2d 358, 81 S. Ct. 365, cited by petitioner, there is no charge here that the respondent or any other organization mentioned in the suit was capricious, arbitrary, unreasonable or non-objective either in the adoption of standards of safety in the furtherance of fire protection, or the application of the standards to petitioner's device. Nor is there any accusation that the respondent insurance company or any other organization named by petitioner has attempted to restrain competition between the petitioner and the manufacturers of any other fire alarm devices.

Clearly, cooperation among organizations engaged in the furtherance of fire prevention does not constitute a prescribed combination under the anti-trust laws, particularly where it is conceded that the motives and purposes are proper and no claim is made that the stated pur-

poses are being used as a cloak for illegal activity. Where, as here, there is a complete absence of the competitive context, the Sherman Act has no application and the decisions of the Courts below so holding are manifestly correct.

II.

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT WAS PROPERLY GRANTED.

Petitioner, in two separate suits filed *seriatim*, has twice been before the District Court and the Court of Appeals in connection with suits seeking to require the listing of its fire alarm device. In each instance, a complete record was developed and the discovery procedures of the District Court used to the fullest extent.

While the present case was decided on motion for summary judgment, petitioner has in fact had the equivalent of a full trial. It filed a total of 131 requests for admissions of fact, 126 interrogatories, several requests for admission of genuineness of documents, several affidavits and took the depositions of six witnesses (Opin. District Judge filed November 22, 1960) (R. 9-10b). The District Court carefully considered all facts and found that:

> "No material fact remains in issue and since the plaintiff would not be entitled to relief under the Sherman Act for the reasons stated above, the motion for summary judgment will be granted" (R. 33a-34a).

"Summary judgments have a place in the anti-trust field, as elsewhere * * *." *The White Motor Company v. United States*, U. S. , 9 L. Ed. 2d 738, 744, 83 S. Ct. , decided March 4, 1963, as:

> "[T]here can be no doubt that summary judgments are as applicable to actions under the Sherman Act as they are to any other type of actions, legal or equi-

table. Associated Press v. United States, 1945, 326 U. S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013; Morton Salt Co. v. G. S. Suppiger Co., 1942, 314 U. S. 488, 315 U. S. 788, 62 S. Ct. 402, 86 L. Ed. 363; International Salt Co. v. United States, 1947, 332 U. S. 392, 68 S. Ct. 12, 92 L. Ed. 20; United States v. United States Gypsum Co., 1950, 340 U. S. 76, 71 S. Ct. 160, 95 L. Ed. 89." *United States v. Krasnov* (E. D. Pa.), 143 F. Supp. 184, 197; aff'd 355 U. S. 5, 2 L. Ed. 2d 21, 78 S. Ct. 34.

The disposition of each case involving a motion for summary judgment turns on the question whether a genuine factual dispute is present. In cases where, after complete discovery procedure, all the facts are available without dispute, summary judgment is warranted. *Kentucky Rural Elec. Co-Op. Corp. v. Moloney Elec. Co.* (W. D. Ky. 1959), 175 F. Supp. 250, aff'd (6th Cir. 1960), 282 F. 2d 481, cert. den. 365 U. S. 812, 5 L. Ed. 2d 691, 81 S. Ct. 692, reh. den. 365 U. S. 855, 5 L. Ed. 2d 820, 81 Ct. 799 (1961), (on depositions, affidavits, charters, by-laws and other exhibits); *Feldman v. Miller*, 220 F. 2d 826 (D. C., 1955) (depositions, interrogatories and a transcript); *Page v. Work*, 290 F. 2d 323 (9th Cir., 1961), cert. den. 368 U. S. 875; 7 L. Ed. 2d 76, 82 S. Ct. 121 (30 pages of admitted facts from exhibits, depositions, admissions and interrogatories); *Marion County Cooperative Association v. Carnation Co.*, 214 F. 2d 557 (8th Cir., 1954) (undisputed facts in affidavits, plaintiff not offering any counterproof or impeaching them); *Saron Gas Stations No. 6, Inc. v. Shell Oil Co.*, 309 F. 2d 306, cert. den. U. S. 9 L. Ed. 2d 719, S. Ct. (affidavits and interrogatories). In all of these cases it was determined, as in the instant case where comprehensive discovery procedures have resulted in eliminating all issues of fact, that the case was ripe for disposition by summary judgment.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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